

P. Williams



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Texas Communications

File: B-242075

Date: April 2, 1991

Sam Z. Gdanski, Esq., for the protester.
John M. Taffany, Esq., Bailey & Shaw, P.C., for Tucson
Mobilephone, Inc., an interested party.
John Pettit, Esq., Department of the Air Force, for the
agency.
Paula A. Williams, Esq., and Paul I. Lieberman, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

1. Whether an offeror will comply with solicitation require-
ment that employees possess certificates of training and
competence to perform certain maintenance services prior to
contract start date is a matter of contract administration.
The requirement does not constitute a definitive respon-
sibility criterion, rather, an offeror's ability to satisfy
this performance obligation is simply a general matter which
is encompassed by the contracting officer's responsibility
determination.

2. The General Accounting Office will not review an affirma-
tive determination of responsibility absent a showing of
possible fraud or bad faith on the part of procuring offi-
cials, or that definitive responsibility criteria were
misapplied.

DECISION

Texas Communications protests the award of a contract to
Tucson Mobilephone Inc. (TMI), under request for proposals
(RFP) No. F41652-90-R-0015, issued by the Department of the
Air Force for the repair and maintenance of land mobile radio
(LMR) equipment located at Dyess Air Force Base. Texas
Communications alleges that the Air Force improperly deter-
mined TMI to be a responsible offeror because it failed to

051018 / 143537

comply with definitive responsibility criteria set forth in the solicitation.^{1/}

We dismiss the protest.

The RFP, issued on August 8, 1990, contemplated the award of a fixed-price requirements contract for a base year and 4 option years. Proposals would be evaluated in four major technical areas on a pass/fail basis of whether they complied with the agency's minimal technical requirements, followed by an evaluation of cost proposals for completeness, realism and reasonableness. Award would be made to the technically acceptable lowest-priced offeror.

The RFP required the contractor to furnish all personnel and equipment necessary to provide on call maintenance of LMR equipment in accordance with the standards enunciated in Section C of the RFP, the Performance Work Statement (PWS), which included the following certification requirements:

"1.2.2.2. The contractor shall ensure employees have a National Industry Certification issued by the Land Mobile Radio (LMR) Industry before starting work, IAW [paragraph] 1.2.3.1. . . ."

"1.2.3.1. . . . The contractor shall provide the LMR Manager a National Industry Certificate issued by the Land Mobile Radio Industry for each technician. The contractor shall ensure that an adequate number of technicians attend courses or schools conducted or available from the original equipment manufacturer, for specialized equipment . . . The specialized training must be completed prior to the contract start date. The contractor shall provide . . . a Certificate of Competency of completion of specialized training prior to the contract start date"

Two firms submitted proposals and both were included in the competitive range. The agency held discussions with both and requested best and final offers (BAFOs). TMI was determined to be the low offeror at a total price of \$480,591.50 versus \$789,600.30 for Texas Communications. The Air Force determined that TMI's lowest priced offer would satisfy the government's requirements and that its evaluated price was fair and reasonable. Award was made to TMI on November 28. Thereafter, the contracting officer opened a letter which had been submitted by Texas Communications on September 14 with

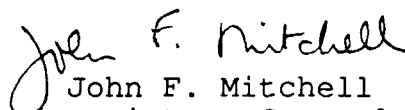
^{1/} Initially, Texas Communications had alleged that TMI's offer is unbalanced, however, in its conference comments, the protester withdrew this ground of protest.

instructions that it be opened in the event that award was made to TMI. The letter was an agency-level protest in which Texas Communications protested any award to TMI on the grounds that TMI is not qualified to perform the technical requirements of the RFP and that its poor performance history suggests that it is not a responsible offeror. On November 29, the contracting officer denied Texas Communications' protest stating that TMI's proposal was technically acceptable and, based on a preaward survey, TMI was determined to be responsible.

In its protest to our Office, Texas Communications contends that TMI did not satisfy the certification requirements quoted above, which the protester maintains are definitive responsibility criteria. The Air Force asserts that the certification requirements do not constitute definitive responsibility criteria, but simply establish that contractor's employees furnish certificates showing that they have the requisite experience prior to the contract start date. Even if the requirement was considered to constitute a definitive responsibility criterion, the agency points out that TMI submitted the requisite certificates with its offer.

We recently decided that since the requirement that employees possess certificates of training and competence in the area of LMR equipment maintenance "before starting work" did not require that the certificates be obtained prior to award, the requirement was a performance obligation. Southern Nevada Communications, B-241534, Feb. 11, 1991, 91-1 CPD ¶ _____. Accordingly, whether TMI is capable of meeting that requirement is a matter of responsibility, and the wording of the certificate requirement establishes that it is a performance obligation, not a definitive responsibility criterion. Id. TMI's ability to meet the certification requirements was encompassed by the contracting officer's affirmative determination of responsibility and we will not review such a determination except in circumstances not present here. 4 C.F.R. § 21.3(m) (5) (1990); Id.

The protest is dismissed.


John F. Mitchell
Assistant General Counsel